HC-22

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO. 170 OF 2006

S.B. HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

APPLICANT	:	Vijay Agrawal, aged about 46 years, son of Shri Hariram Agrawal, Member of Legislative Assembly, Raigarh constituency, Resident of Chakradhar Nagar, nearby of water tank, Raigarh, Tahsil & District Raigarh (CG)
NON-APPLICANTS	1.	Laxmi Kant Dwivedi, S/o Devi Sharan Dwivedi, aged about 48 years, Occupation – Then Deputy District Election Officer, Through – District Election Officer, Raigarh, Collector Office, Raigarh (CG)
	2.	The State of Chhattisgarh, Through Deputy District Election Officer Raigarh (CG), Present address (wrongly mentioned)- Through *Samanya Prashashan Vibhag*, M.P. Government, Bhopal.

24.10.2007

Shri Santosh K. Tiwari, counsel for the applicant.

Shri GK Beriwal, Dy AG for the State/non-applicant No. 2.

The applicant by the instant petition under Section 482 of the Code of Criminal Procedure (for brevity 'the Code') has prayed for quashing of complaint case No. 94/04 pending before the Court of Judicial Magistrate First Class, Raigarh and also for setting aside the order dated 8.11.2005 passed by learned Sessions Judge, Raigarh in criminal revision No.

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05/2005 whereby the revision preferred by the applicant against rejection of his application under Section 245(2), 249 of the Code, has been further dismissed.

Briefly stated, the facts necessary for adjudicating this petition are that non-applicant No. 1 filed a criminal complaint of Annexure P/2 for the offence under Section 425 of the IPC with the allegation that the applicant was a candidate in general election held in the year 1993 and during his election campaign, the accused persons who were three in number in the complaint wrote election slogans on the walls of Govt. Women College, Raigarh. The Election Commission directed the accused persons to remove their posters and paint the walls at their expenses. However, they did not comply with the above directions and as a result of conduct of the accused persons there was a change in the situation of the property belonging to the Government, which resulted in pecuniary loss as the Government shall be incurring expenditure to the tune o Rs.3,000/-.

Learned counsel for the applicant submits that there are general and omnibus allegations against the accused persons that they defaced the walls of the building without mentioning any particulars regarding the date and time when the alleged mischief was committed by the accused persons. No intention has been attributed to the accused persons in the complaint

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that they did so with an intention to cause wrongful loss to the State Government whereas intention is a *sine quo non* for attracting the offence of mischief. It is also argued that the Election Commission issued a circular of Annexure P/1 whereby the candidates were directed not to write slogans or paste posters on the public property or even private buildings without consent of the owners. However, the said circular was to be implemented prospectively and the same was issued on 18.1.1994 i.e. after commission of the alleged offence.

Reliance is placed on the decisions reported in **AIR 1986 SC 1653, Bihar State Electricity Board and another Vs. Nand Kishore Tamakhuwala**, **1992 Cri.L.J. 1871, Nagendranath Roy Vs. Dr. Bijoy Kumar Dasburma and another**, **1999 Cri.L.J. 394 Suyambu Nadar and others Vs. State by S.I. of Police** and **AIR 1957 Allahabad 405, Sippattar Singh and others Vs. Krishna.**

On the other hand, learned counsel for the State supported the impugned order.

I have heard learned counsel for the parties and have also perused the complaint as also the impugned order.

From perusal of the complaint it is evident that there are allegations in the complaint that the accused persons during their election campaign wrote slogans related to their elections. They were directed by the Election Commission to remove the

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posters/ distemper the walls and restore the same to its original condition. However, when the accused persons failed to comply with the above directions, the instant complaint was filed with the allegation that because of the act of the accused persons there was a change in the situation of the property as it has caused loss in its value and the State shall have to incur expenditure in re-distempering the same to the tune of Rs.3,000/-. To establish the allegations in the complaint list of witnesses has also been given.

In the matter of *Bihar State Electricity Board and another* (supra) the allegation in the complaint was that because of failure of power supply for four days the complainant, who was owner of the flour mill, suffered wrongful loss. The Hon'ble Apex Court considering the allegations present in the complaint arrived at the conclusion that no acts are alleged against any one of the accused persons which could bring any of their action within the mischief of the definition of mischief.

In the matter of *Nagendranath Roy* (supra) the allegation in the complaint was that a calf belonging to the complainant was treated by the accused, a veterinary doctor, who initially administered the calf some oral medicine and thereafter administered some injections, as a result of which the calf died. Grievance of the complainant was that the accused persons i.e. the Doctor and the Stockman were negligent in their duties as

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they did not take proper care to check up attendant risk in administering the injections. On these facts it was held that the mischief involves intention or knowledge of likelihood to cause wrongful loss or damage. It does not unnecessarily contemplate damage of a destructive character. Destruction with object of creating wrongful loss or damage is obligatory to be established. Negligence does not necessarily amount to mischief. Negligence coupled with intention to cause wrongful loss or damage may amount to mischief in certain circumstances.

In the case of *Suyambu Nadar and others* (supra) four dogs allegedly belonging to the accused had bitten the goats of the complainant at 1.30 hours in the night resulting in death of 28 goats and serious injuries to 19 goats. However, the accused persons were acquitted on the ground that the complainant has failed to prove that the accused persons intend to cause or has the intention that by their act they are likely to cause wrongful loss or damage to any person so as to destroy or diminish it's value or utility and there is no evidence available on record regarding the role played by the accused persons.

After going through the allegations present in the complaint, in the light of the principles of law laid down by the Hon'ble Apex Court in the aforesaid judgments, it is evident that there is a specific allegation in the complaint that wall of

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the Govt. Women College was painted with the election slogans of the applicant and other accused persons. It cannot be said that the same were done negligently or that the accused persons were not aware that by doing so they are likely to cause wrongful loss to the owner of the property. So far as objection that the complaint does not specifically mentions the particular role played by the applicant, is concerned, just because of absence of the same in the complaint, which is otherwise containing particulars of ingredients of offence under Section 425 of IPC, the complaint cannot be quashed at the initial stage. The complainant is required to prove the above facts by adducing evidence during trial and therefore, in the opinion of this Court, the Court below has not committed any illegality in dismissing the revision petition preferred by the applicant against the order passed by the trial Court rejecting his application under Section 245(2), 249 of the Code for discharging him from the offence under Section 425 of the IPC.

In the result, the instant petition being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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